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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 DEC 22 PM 2:19 ✓

CLERK

BY: S Smisko

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION IN**
) **LIMINE RE COUNSEL AS**
) **WITNESS**

) (Oral Argument Requested)

18
19
20 Defendant Steven DeMocker, by and through his counsel, hereby moves this
21 Court for an Order *in limine* precluding the State from calling John Sears as a witness in
22 this case. This motion is supported by the following Memorandum of Points and
23 Authorities.

24 **ARGUMENT**

25 The State has listed Mr. Sears as a witness and have indicated that the want to
26 call him to discuss the circumstances under which he came into possession of a golf
27
28

1 club head cover from Mr. DeMocker. After the cover was turned over to the police
2 when requested on October 23, 2008, Mr. Sears met the next day with the two deputy
3 County Attorneys then responsible for this case, and offered to enter into an appropriate
4 written stipulation regarding the chain of custody of the cover. As the case was just
5 beginning, that matter was not discussed in any detail and no agreement was reached.
6 Since then, Mr. Sears has made the same offer to Mr. Butner, who has indicated that he
7 still wants Mr. Sears' live testimony.

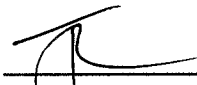
8 ER 3.7 describes the general rule that a lawyer should not serve as both an
9 advocate and a witness, to avoid prejudice to the tribunal or the opposing party or to
10 avoid a conflict of interest with his own client. An exception to that rule is found when
11 disqualification of the lawyer would "work substantial hardship" on the client. ER
12 3.7(a)(3). In this case, the State has never filed a motion to disqualify Mr. Sears. Of
13 course, Mr. Sears may not be examined in the State's case-in-chief about privileged
14 communications with his client about the transfer of the head cover and related events.
15 Given the proposed chain of custody stipulation, then, it would seem that Mr. Sears has
16 offered to stipulate to all that the State could elicit from him on this topic. Certainly,
17 disqualifying Mr. Sears four months before trial, after more than seventeen months has
18 elapsed, would work an incredible hardship on Mr. DeMocker. Accordingly, thos
19 motion should be granted and the State should be required to accेत the proposed
20 stipulation of counsel.

21 CONCLUSION

22 Defendant Steven DeMocker hereby requests an Order *in limine* precluding the
23 State from calling John Sears as a witness in this case.

24 DATED this 22d day of December, 2009.

25
26 By:



John M. Sears
P.O. Box 4080

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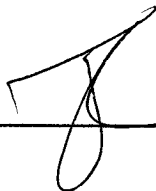
ORIGINAL of the foregoing
filed this 22nd day
of December, 2009, with:

Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing delivered
this 22nd day of December, 2009, to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Yavapai County Attorney
Prescott courthouse basket

A handwritten signature in black ink, appearing to be 'J. Butner', is written over a horizontal line.